

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 84-003-12-1-1-03767
Petitioners: Kenneth E. Steiner, Jr., et al.
Respondent: Vigo County Assessor
Parcel: 84-09-12-200-003.000-003
Assessment Year: 2012

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2012 assessment appeal with the Vigo County Assessor on February 10, 2013.
2. On June 26, 2014, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
4. The Board issued a notice of hearing on June 28, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 11, 2016. She did not inspect the property.
6. Kenneth Steiner, Jr. and Rebecca Jane Hair appeared *pro se*.¹ Reassessment supervisor Michael West appeared for the Respondent. Jarrod M. Steiner was a witness for the Petitioners. All of them were sworn.

Facts

7. The property under appeal is a 106.641-acre unimproved parcel located on Riley Road in Terre Haute.
8. The PTABOA determined the total assessment is \$107,800.
9. The Form 131 claimed the total assessment should be \$71,500.

¹ According to the Taxpayer's Notice to Initiate an Appeal (Form 130) Rebecca Jane Hair has a 1/8 interest in the subject property.

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1:	Aerial map of the subject property.
Respondent Exhibit 1:	2010, 2011, and 2012 subject property record cards,
Respondent Exhibit 2A:	2012 Geographical Information System (GIS) map of the subject property,
Respondent Exhibit 2B:	GIS map of the “farmed area,”
Respondent Exhibit 3A:	2008 GIS map of the “farmed area,”
Respondent Exhibit 3B:	2010 GIS map of the “farmed area,”
Respondent Exhibit 4A:	2014 GIS map of the “farmed area,”
Respondent Exhibit 4B:	2016 GIS map of the “farmed area.”
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of Hearing dated June 28, 2016,
Board Exhibit C:	Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners’ case:

- a) The property’s assessment is too high. The Indiana Department of Transportation (INDOT) purchased 13.359 acres from the Petitioners to construct a “right-of-way for a new highway [the] 641 bypass.” At some point after INDOT purchased this section of the property, they offered it back to the Petitioners. The Petitioners subsequently re-purchased the property, but the “bypass route” split the 13.359 acres from the rest of the property. The Petitioners are only appealing the 13.359 acre portion of their property, “not the section on the other side of the bypass.” *Steiner testimony; Pet’rs Ex. 1.*
- b) Due to lack of access from the highway and a fence on both sides, the Petitioners no longer can farm the 13.359 acres. As a result, they have “no means of supporting” the taxes on this portion of the property. *Steiner testimony.*
- c) During cross-examination, however, Mr. Steiner testified “my mistake, we were able to farm this for 2012; our contention is that now it is landlocked.” Ultimately, the

Petitioners agree the Respondent correctly assessed the property in 2012, but feel they need relief for assessment years after 2015.² *Steiner testimony.*

12. Summary of the Respondent's case:

- a) The subject property is correctly assessed. According to several imaging maps, the 13.359 acres in question was being farmed up until 2016. *West testimony; Resp't Ex. 1, 2A, 2B, 3A, 3B, 4A, 4B.*
- b) The Respondent is aware that the Petitioners have now lost access to farming the area in question, and will address that issue in subsequent assessments. *West testimony.*

Burden of Proof

- 13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
- 14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
- 15. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
- 16. Here, the Respondent argued the burden should remain with the Petitioners because the assessment did not increase by more than 5% between 2011 and 2012. In fact, the assessment only increased from \$107,600 to \$107,800. The Petitioners failed to offer any argument the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

² In response to the Respondent's argument that “the county is correct in the assessment” the Petitioners stated “you are.”

Analysis

17. The Petitioners failed to make a prima facie case for reducing the 2012 assessment.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Petitioners initially argued the 2012 assessment of the 13.359 acres should be reduced.³ They argued that because of a lack of “current” access, they are unable to farm this portion of their land. At the hearing, however, they acknowledged this issue did not affect the property in 2012, as it was still being farmed then. Ultimately, they agree with the Respondent that the 2012 assessment is correct. However, they proceed to argue that they should be entitled to future relief. The Board reminds the Petitioners that the only year under appeal here is 2012; as such this is the only year the Board will address. Consequently, the Petitioners failed to make a prima facie case for reducing the 2012 assessment.
 - d) Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dept't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

³ Along with their Form 131, the Petitioners submitted an appraisal of the subject property. This appraisal, however, values the entire property and does not separate the 13.359 acres that is subject to this appeal. *See Bd. Ex. A*. Additionally, the Petitioners never made mention of the appraisal during the hearing. As the Petitioners ultimately agreed with the 2012 assessment, the Board will not address the appraisal.

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will not be changed.

ISSUED: November 2, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.